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PANAMANIAN FOREIGN MINISTRY COMMUNIQUE ON CANAL TREATIES

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[Panamanian Foreign Ministry communique issued on 25 April 1978]

[Text] I. Introduction

When the Senate of the United States gave its advice and consent to President Carter regarding the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, the Foreign Ministry issued two communiques (16 and 27 March) in which it said that the government would not express its judgment on the amendments, understandings, conditions and reservations approved by the Senate until the same body also arrived at its constitutional decision regarding the Panama Canal treaty.

On the 18th of this month the U.S. Senate gave its advice and consent to President Carter regarding the Panama Canal treaty with the reservations and understandings which will be analyzed in this communique.

With the completion of the Senate's proceedings in the United States, the Foreign Ministry, complying with orders from His Excellency President Demetrio B. Lakas and His Excellency Chief of Government Brig Gen Omar Torrijos Herrera, now undertakes to fulfill its duty of explaining to the citizenry the juridical scope of the resolutions of the Senate and setting forth its stand concerning the Senate's decision.

II. Significance of the Terms "Amendments," "Understandings" and "Reservations"

The above terms are used by the Senate in its resolutions of 17 March and 18 April of the present year. For this reason it is appropriate to express the meaning given to those terms by U.S. jurists.

Amendments

An amendment to a treaty is a formal change in the letter of the text negotiated by the parties.

Reservations

A reservation modifies or limits the substantive effect of one or more of the treaty stipulations. A reservation is a condition which adds something substantial to a treaty or eliminates something substantial from it. A reservation is a notification in the sense that the state making it will not implement the treaty except in accordance with that condition.

Understandings

The term "understanding" is used to describe a declaration which is not made with the intention of modifying or limiting any of the treaty stipulations. An understanding can clarify or interpret one or more of the treaty stipulations or incorporate a declaration of policy or procedure.

Declarations

The terms "declaration" or "communication" are used to express certain matters of policy or principle and in no way abrogate or change the rights or obligations stipulated in the treaty. Frequently those terms are used interchangeably with the word "understanding."

The legal meaning of a Senate declaration, regardless of its designation, depends entirely on its substance. A declaration which modifies, limits or changes the text of the treaty or its meaning is actually a reservation. A declaration which clarifies or explains or deals with a secondary matter does not change the treaty and consequently is not a reservation. Sometimes it can be difficult to distinguish clearly between an understanding and a reservation. One may gradually obscure the other and thus become a question which the two parties may decide for themselves.

(Source: Whiteman, Digest of International Law, Vol 14, pp 137-198)

The Vienna convention of 1969 on treaty law says in Article 19:

"Article 19. A state may formulate a reservation at the time of signing, ratifying, accepting or approving a treaty or adhering to it...."

That same convention defines the term "reservation" in Article 2 (1) D:

"D. 'Reservation' is understood to be a unilateral declaration, regardless of its name or designation, made by a state in signing, ratifying, accepting or approving a treaty or in adhering to it with the purpose of excluding or modifying the legal effects of certain dispositions of the treaty in its application to that state."

In formulating the draft of the convention, the commission of international law explained the word "reservation" in the following terms:

"13. A definition of reservation becomes necessary because the states, in signing, ratifying, accepting, approving a treaty or adhering to it, usually formulate declarations on the manner in which they understand some questions or on their interpretation of certain dispositions. Such a declaration can be a simple clarification of the position of the state or can be a reservation, depending on whether it modifies the application of the clauses of the treaty already approved or excludes it."

(Document of the United Nations, Supplement No 9 A/5209, p 8)

Although this Vienna convention has not entered into force, it is the product of the work of codification of public international law sponsored by the United Nations and reflects the present state of the development of the norms which regulate relations between those subject to international law.

We can assert that, regardless of the term used, what matters is if the condition, reservation, amendment or declaration made by one party to the other modifies or changes what has been agreed to by the plenipotentiaries. If that change has been made, it is unquestionable that the treaty has not been ratified but, rather, that a counteroffer has been made by one party which the other is at liberty to reject, modify or approve. Only if it approves the counteroffer is the consent or perfecting [perfeccionamiento] of the wish of both parties to obligate themselves realized.

III. Ratification by Plebiscite in Panama

In the United States ratification is effected by the president with the advice and consent of the Senate. In Panama, in conformity with Article 274 of the constitution, ratification of the treaties concerning the canal is by plebiscite. The authority to ratify resides exclusively in the people, in each citizen who takes on the responsibility of a conegotiator. The executive branch is not responsible for ratification in Panama. Its role is limited to that of being a mere exponent of the popular will.

The plebiscite required by the constitution has already been carried out in Panama. The people of Panama expressed their desire to ratify, that is, to give their approval to, the government's negotiating effort in the plebiscite held on 23 October 1977.

IV. Documents Ratified by the Panamanian Citizenry on 23 October 1977

Under Law 33 of 1977, which summoned the people to a plebiscite, the following were submitted for the consideration of the citizenry: the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and the Panama Canal treaty with the minutes [actas], annexes, maps and agreements signed in Washington, D.C., on 7 September 1977. In addition the Panamanian people approved the statement of understanding of 14 October 1977 agreed upon by Panamanian Chief of Government Gen Omar Torrijos Herrera and U.S. President Jimmy Carter. This statement was personally explained to the citizenry by General Torrijos before 23 October 1977. In other words, the people who supported the Torrijos-Carter treaties in the plebiscite approved the true interpretation given to those instruments by their signatories, that is, by the persons most authorized to interpret them or determine their true scope.

The statement of understanding was as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the neutrality treaty), Panama and the United States have the responsibility to guarantee that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with its respective constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal. This does not mean, nor shall it be interpreted as, a right of intervention by the United States in the internal affairs of Panama. Any U.S. action will be directed at insuring that the canal remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

"The neutrality treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency to go to the head of the line of vessels in order to transit the canal rapidly."

V. The DeConcini Reservation and the Principle of Nonintervention

The struggle against colonialism has been long and bloody. The best example of a collective effort to break the chain of oppression was given by America when Bolivar liberated the people and gave them the fruits of their own government. Despite this independence, however, new forces alien to our people established spheres of influence and colonial situations which, fortunately, have been almost eliminated. In addition to their fight for their emancipation, the peoples of America have also struggled to eradicate all forms of interference in their domestic affairs.

A clear Latin American contribution to the development of international law has been the formalization of the principle of nonintervention, which was codified for the first time in Article 8 of the conference [as published] on the rights and duties of states approved by the Seventh Pan-American Conference held in Montevideo in 1933. This rule states:

"No state has the right to intervene in the internal or external affairs of another."

President Franklin Delano Roosevelt's position was clearly expressed by the U.S. delegate in these words:

Declaration made by the U.S. commission upon signing the Convention on the Rights and Duties of States in Montevideo in 1933:

"Any observing person must clearly understand now that under the Roosevelt administration the U.S. Government is as opposed as any other government to interference with the liberty, sovereignty or other domestic affairs or processes of the governments of other nations....

"I feel safe in committing myself to the statement that, with our support for the general principle of nonintervention as it has been defined, no government should fear any intervention by the United States under the Roosevelt administration."

This principle or basic norm of international conduct was successfully introduced by Latin American jurists, including our Dr Ricardo J. Alfaro, into the UN Charter, adopted in 1945, which in Article 2 (4) states:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

In April 1948, 30 years ago, the American countries met in Bogota where they clearly and categorically reiterated their support for the principle of nonintervention as follows:

Article 15 of the OAS Charter approved in Bogota in 1948: "No state or group of states has the right to intervene, directly or indirectly, regardless of the reason, in the domestic or foreign affairs of another. The foregoing principle prohibits not only action by the armed forces, but any other form of interference or attack on the character of the state and political, cultural and economic elements which constitute it." (Note: This article is identical to Article 18 of the OAS Charter amended by the Buenos Aires protocol in 1967.)

The aforementioned article is included in Chapter 17 of the OAS Charter which is entitled "Rights and Fundamental Duties of States," and Article 11 of this same charter states:

"The fundamental duties of the states are not susceptible to impairment in any manner."

The foregoing signifies that the states have accepted a limitation to their capacity to contract internationally. The state cannot contract the destruction of its character, and there is no pact whatsoever which can validly achieve that objective.

In view of the stipulations of the aforementioned Article 11, during the plebiscite period the Foreign Ministry spokesmen explained that Article V of the canal treaty, which establishes the principle of nonintervention as a duty of the United States to abstain from meddling in the domestic affairs of Panama, was unnecessary from the legal viewpoint but that it had been included as a precautionary political measure. And in view of multilateral rules contained in treaties-laws, as are the UN and OAS charters, conventions which regulate the conduct of Panama, the United States and other countries, there is not the slightest shadow of a doubt that no state, superpower or ministate, can claim the "right" to intervene in areas which are of the exclusive competence of other states.

But a hardly edifying spectacle was given when some U.S. senators, during the Senate debate on the Torrijos-Carter treaty, rudely used language which without a doubt indicated that, in their opinion, the United States has the "right to intervene" in Panama to preserve the neutrality and security of the canal.

This must be made very clear. The "right of intervention" does not exist; everything is to the contrary [todo lo contrario]. Intervention has been proscribed in international legal life. There may be interventions. These cannot be avoided, just as crime cannot be avoided, but such interventions can only be regressively engendered by colonialist and neocolonialist minds which still do not understand that the destiny of man is freedom.

During his speech in the Senate, Senator DeConcini used language which offended the dignity of the Panamanian nation and which is not consonant with the great advancements of humanity. He spoke of so-called rights of intervention which the peoples of the world, organized under the symbol of the United Nations, extinguished once and for all in a collective manner. However, Senator DeConcini also stated:

"This does not mean, nor should it be interpreted as, a right of the United States to interfere in the domestic affairs of Panama."

Any intervention violates the basic rule of self-determination.

Any intervention violates the respect which every state owes to the independence, territorial sovereignty and honor of other states. Therefore, our citizens expressed with righteous firmness their repudiation of Senator DeConcini's words used in explaining his amendment.

Fully identified with the national will, the Panamanian Government made timely efforts before the U.S. Government to ensure the Senate would reaffirm the international commitments of the United States contained in the UN and OAS charters. We were successful in that respect. To dispel any doubt, the U.S. Senate in its 18 April resolution stated:

Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure and accessible pursuant to the provisions of the treaty and the neutrality treaty, and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure and accessible, and shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

This Senate resolution renders indefensible the allegation that the Torrijos-Carter treaties grant the United States any right of intervention in Panama.

According to international law, the obligation which all states have of nonintervention in the internal affairs of others is but the corollary of the principles of sovereign equality of states and respect for their political independence. If sovereignty is the right of all peoples to have their own government, to not have any other supreme state power, it is evident that any intervention conflicts with political independence and is repudiated legally by all humanity.

Panama's political independence, territorial integrity and self-determination are guaranteed by the unshakable will of the Panamanian people and the active solidarity of peoples of the world, in accordance with what was solemnly compacted in the UN Charter. On 28 November 1821 Panama declared its will to be free and independent. This decision was reaffirmed on 3 November 1903 and also on 9 January 1964 when the January martyrs who offered their lives pointed out the path of sacrifice as the price of liberation from the colonialist yoke. Therefore, the Republic of Panama rejects, in a united and decisive fashion, any attempt by any country to intervene in its internal affairs. This is not only a matter of international law but of the steadfast will of our people.

Liberty is an inborn right of human beings and people. One is free when liberty takes hold of the soul of a people. That torch exists firmly in the heart of each and every Panamanian, and therefore any attempt to intervene in matters of the exclusive competence of Panamanians will be rejected without any hesitation.

VI. Intervention Is Repudiated in the U.S. Senate

The voices of great U.S. leaders were heard clearly as they repudiated any interpretation that an alleged "right" to intervene in Panama could be inferred. Senators Frank Church, Mike Gravel, George McGovern, Jacob Javits, Paul Sarbanes, Edward Kennedy and others stated that the era of intervention is a thing of the past. It is relevant to quote a portion of Senator Kennedy's statements:

"And it is quite fair that the government and people of Panama should aspire to end the foreign military occupation of their own territory, that they should aspire to recover full national control of all their territory almost 100 years after becoming independent."

For his part, Senator Church said:

"The UN Charter, the OAS Charter and the Inter-American Treaty of Reciprocal Assistance--our military alliances with our neighbors in this hemisphere--all contain provisions which prohibit intervention in the internal affairs of other nations. Therefore, the interventionist policy of the United States is a thing of the past.

"However, in Latin America memories have not faded The main unifying force in the foreign policy of the Latin American nations over the last 40 years has been support for the principle of nonintervention. Having committed themselves 40 years ago to a new and more mature relationship with the United States, the Latin American countries are determined to keep it that way."

VII. America in a State of Alert To Keep the Doors of Intervention From Being Reopened

As clear proof of all the American peoples' effective and affective solidarity with Panama in its struggle to free itself of every colonialist presence or vestige of colonialism in its territory, it is worthwhile to note the words of two prominent Latin American leaders.

Venezuelan President Carlos Andres Perez said the following on welcoming the President of the United States in Venezuela on 28 March of this year:

"With all this, Mr President, the feelings of the Latin American people are interpreted in a fully optimistic manner but without being able to hide the sincere concern felt throughout Latin America in the face of any eventuality.

"Just as we joyously celebrated the U.S. bicentennial, we Latin Americans want to celebrate with the same fraternal rejoicing the ratification of the new treaties, the indication of a new era of friendship and cooperation between Latin America and the United States. This is the symbolic meaning of the new Panama Canal treaties.

"Not only will this be the ratification of a new treaty that is just and respectful of sovereignty, but at the same time, it will ratify forever the eternal friendship between the United States and Latin America."

Colombian President Dr Alfonso Lopez Michelsen let his eloquent voice be heard in the following terms:

"Let not the foot of a foreign power again be placed on the sacred soil of a Latin American country.

"The Bogota charter, approved by the Pan-American Conference in April 1948, guarantees our right to never suffer intervention by any foreign power."

VIII. General [illegible] Dignity in Order To Make a Decision

Despite the fact that the Foreign Ministry communiques expressed the government's decision to withhold judgment regarding the reservations introduced into the canal neutrality treaty, it is obvious that General Torrijos' statements to the press and his notes to the chiefs of state of the whole world and to President Carter indicated the government's dissatisfaction and concern regarding the interventionist nature of the so-called DeConcini reservation. Therefore, in his note to the chiefs of state, General Torrijos said:

"Because of the support which your people and government have given to the Panamanian cause and because, according to Article 7 of the neutrality treaty, Panama and the United States will open to the support of all the states of the world the objectives of this treaty, we have believed that it is our duty to inform you of this situation about which we have publicly expressed our deep concern."

And in his letter to President Carter, our chief of government said:

"However, I do wish to point out that this study will be based on the following concepts: Panama will consider unacceptable any reservation which offends the national dignity, which distorts or changes the objectives of the treaty or which is designed to prevent the effective exercise by Panama of sovereignty over all its territory, the turnover of the canal and the military withdrawal on 31 December 1999."

IX. Analysis of the Amendments, Reservations and Understandings

The Foreign Ministry now proceeds, methodically, to analyze the amendments, reservations and understandings by which the U.S. Senate gave its advice and consent to the Torrijos-Carter treaties.

I. Amendments:

A. At the end of Article IV, insert the following: "A correct and authorized statement of certain rights and duties of the parties under the foregoing is contained in the statement of understanding issued by the Government of the United States of America on 14 October 1977 and by the Government of the Republic of Panama on 18 October 1977, which is hereby incorporated as an integral part of this treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the neutrality treaty), Panama and the United States have the responsibility to assure that the canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal. This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

B. At the end of the first paragraph of Article VI, insert the following:

"In accordance with the statement of understanding mentioned in Article IV above: The neutrality treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the canal expeditiously. This is intended, and it shall be so interpreted, to assure the transit of such vessels through the canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the canal rapidly."

A perusal of these two amendments reveals that they correspond exactly with the statement of understanding agreed upon by General Torrijos and President Carter on 14 October 1977. This declaration contains an authentic interpretation of the treaty of neutrality agreed upon by the signatories. It was released publicly in Panama before the plebiscite and accepted by the citizenry in approving the Torrijos-Carter treaties.

What the above transcribed amendments do is to formalize the statement of understanding because it was not signed. But this fact does not minimize its obligatory power. In international law commitments are also contracted in oral form. The interpretation of the neutrality treaty agreed upon by General Torrijos and President Carter obligates Panama as well as the United States and is part of the treaties even though the document is not signed. It was there that the authentic interpretation of the neutrality treaty was given by the person who in Panama has the constitutional responsibility for directing foreign relations.

II. Reservations:

A. Subject to the condition which will be included in the instrument of ratification of the treaty which will be exchanged with the Republic of Panama, notwithstanding the provisions of Article V or any other provisions of the treaty, if the canal is closed, or its operations are interfered with, the Republic of Panama and the United States of America shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the canal or restore the operations of the canal, as the case may be.

This is what has commonly been called the DeConcini reservation. Obviously its scope departed from the Torrijos-Carter declaration because it eliminated the obligation of the United States not to intervene in the internal affairs of Panama and to respect the political independence and territorial integrity of Panama.

Panama has recognized the U.S. right to act unilaterally in defense of the neutrality of the canal. General Torrijos reaffirmed this to President Carter in the note he sent him on 15 March 1978:

"Subsequently, and by virtue of the confusion created regarding the two articles of the neutrality treaty, we proceeded to issue a memorandum of understanding which clearly interpreted the unilateral capacity of each of our countries to preserve the regime of neutrality against threats, attack or closure of the canal, the priority passage of warships in case of emergency and noninterference in the internal affairs of Panama as well as the inviolability of territorial integrity and political independence of my country."

As abominable as the DeConcini reservation were the baseless explanations of the same Senator, who seeks to revive U.S. intervention in the internal affairs of Panama. Fortunately, the Senate approved the 18 April resolution, known as the Church amendment, which reaffirms respect for the principle of nonintervention in the internal affairs of the countries of America, which was reproduced above.

With this last Senate resolution, it is evident that the United States has reaffirmed its international commitments in light of the UN and OAS charters. With it the DeConcini reservation has been rid of its imperialistic and interventionist claws, and the enforcement of the principle of nonintervention has been reestablished. The specter of new interventions at the end of the 20th century, which rightly caused concern to all Panamanians, has been eliminated.

B. Subject to the condition that the instruments of ratification of the treaty shall be exchanged only on the conclusion of a protocol of exchange to be signed by authorized representatives of both governments, which shall constitute an integral part of the treaty documents and which shall include the following:

"Nothing in this treaty shall preclude Panama and the United States from making in accordance with their respective constitutional processes any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the treaty, including agreements or arrangements for the stationing of any U.S. military forces or maintenance of defense sites after that date in the Republic of Panama, that Panama and the United States may deem necessary or appropriate."

This is what is known as the Nunn reservation. It has been objected to in Panama with the argument that it is contrary to Article V of the neutrality treaty which stipulates:

"After the termination of the Panama Canal treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory."

The Foreign Ministry shares the national sentiment regarding the termination of U.S. military occupation. The Nunn amendment does not oblige Panama to negotiate an agreement on bases, much less to accept a treaty with this purpose. The obligation to negotiate is nonexistent and even if it did exist, the obligation to negotiate does not entail the commitment to sign a treaty. In 1970 Panama rejected the 1967 treaties without detriment to the commitments of the United States and Panama before the OAS to negotiate a treaty which would resolve the causes of conflict.

The straight interpretation of the Nunn reservation is that if the United States resolved to propose to Panama the negotiation of a treaty so that the United States could have military bases in Panama after 1999, the government ruling Panama's destiny at that time will be free to agree or not agree to the negotiations. That will be its responsibility. That government will assess the situation and make its sovereign decision which it will communicate to the United States.

With total emphasis, the Foreign Ministry declares that Article V cited previously has not been changed. All states have the power to negotiate without limitations except those imposed by the UN Charter.

C. Before the date of entry into force of the treaty, the two parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes, without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States by the American Battle Monuments Commission, including the display of the U.S. flag, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

D. The U.S. flag may be displayed, pursuant to the provisions of Paragraph 3 of Article VII of the Panama Canal treaty at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

E. The President of the United States:

a. Shall have announced, before the date of entry into force of the treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the termination date of the Panama Canal treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of the United States, and

b. Shall have announced immediately after the date of exchange of the instruments of ratification plans to be carried out at the expense of the U.S. Government, for:

i. Removing, before the date of entry into force of the treaty, the remains of citizens of the United States from Mount Hope, Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the secretary of the army not later than 3 months after the date of exchange of the instrument of ratification of the treaty shall not be removed; and

ii. Transporting to the United States for reinterment, if the next of kin so requests, not later than 3 months after the date of entry into force of the treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the treaty and remains removed from Mount Hope Cemetery, pursuant to Subclause i.; and

c. Shall have fully advised, before the date of entry into force of the treaty, the next of kin objecting under Clause b. i. of all available options and their implications.

This reservation also does not signify any variation from the Torrijos-Carter treaties. What is contemplated here is the possibility of negotiating an agreement on permanent respect deserved by the dead. No Panamanian objects to this agreement. This is deeply rooted in the soul of each Panamanian in view of the Christian doctrine to venerate their predecessors. The Foreign Ministry envisages no difficulty in reaching an agreement with the United States, following the examples used by other countries on this matter, such as France.

Panama has no objection in conformity with the provisions of Paragraph 3 of Article VII of the Panama Canal treaty and once the provisions therein are fulfilled, to the burial of the remains of U.S. citizens under the shadow of their flag in Corozal Cemetery. The funeral rites which any civilized nation holds for those who have offered their lives is worthy of all our respect. This is not a matter of sovereignty or expression of the exercise of juridictional powers. The Panamanian flag will always be flown in a place of honor as unequivocal proof of its sovereignty.

F. To carry out the purpose of Article III of the treaty assuring the security, efficiency and proper maintenance of the Panama Canal, the Republic of Panama and the United States of America during their respective periods of responsibility for canal operation and maintenance shall, unless the amount of the operating revenues of the canal exceeds the amount needed to carry out the purposes of such article, use such revenues of the canal only for purposes consistent with the purposes of Article III.

One of the basic norms of international law is the sanctity of treaties--faithful compliance with its commitments. The purposes of the neutrality treaty expressed in Article III will be carried out with good faith by Panama. Panama will do this as a basic practice of its foreign policy. What the Senate requests here does not deviate from the rules of international law and from what has always been Panama's practice in its foreign relations. Panama will always act in a way that is consistent with its commitments.

III. Understandings:

A. Paragraph 1 C. of Article III of the treaty shall be construed as requiring, before any adjustments in tolls for use of the canal, that the effects of any such toll adjustment on the trade patterns of the two parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

1. The costs of operating and maintaining the Panama Canal;

2. The competitive position of the use of the canal in relation to other means of transportation;

3. The interests of both parties in maintaining their domestic fleets;

4. The impact of such an adjustment on the various geographical areas of each of the two parties; and

5. The interest of both parties in maximizing their internal commerce.

The Republic of Panama and the United States shall cooperate in exchanging information necessary for the consideration of such factors.

The factors noted in this understanding are reasonable. Any good administrator of the Panama Canal, in trying to make adjustments to the tolls, must necessarily consider those factors and others deemed appropriate. Panama, as sovereign owner and exclusive administrator of the canal, will make those decisions which it considers most appropriate for the proper operation of the canal and its greatest profitability, taking into account the fact that the canal has competitors and that means which compete with it are under development.

B. The agreement "to maintain the regime of neutrality established in this treaty" in Article IV of the treaty means that either of the two parties to the treaty may, in accordance with its constitutional procedures, take unilateral action to defend the Panama Canal against any threat, as determined by the party taking such action.

C. The determination of "need or emergency" for the purpose of any vessels of war or auxiliary vessel of the United States or Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

These agreements are consistent with the Torrijos-Carter statement of 14 October 19

D. Nothing in the treaty, in the annexes of the protocol relating to the treaty, or in any other agreement relating to the treaty obligates the United States to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits or international military education and training to the Republic of Panama.

This understanding is correct. The note which Secretary of State Cyrus Vance sent to Ambassador Gabriel Lewis Galindo on 7 September 1977 contains no obligations of economic aid to Panama. That involves measures to be taken at the discretion of the United States independently of the fate of the treaties.

Panama has always understood that the basic economic benefits granted by the treaty are contained in Articles III and XIII.

E. The President shall include all amendments, reservations, understandings, declarations and other statements incorporated by the Senate in its resolution of ratification respecting this treaty in the instrument of ratification exchanged with the Government of the Republic of Panama.

This understanding is directed toward the President of the United States rather than Panama. Panama has no objection to this understanding.

Reservations and Understandings Introduced by the U.S. Senate Into the Panama Canal Treaty

A. Reservations:

1. Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure and accessible, pursuant to the provisions of this treaty and the neutrality treaty and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure and accessible, and shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

This reservation is extremely important politically. With it the Senate dissipated the fears which had emerged throughout Latin America that the DeConcini amendment had revived gunboat and big stick diplomacy in this hemisphere. The Senate has reaffirmed the U.S. commitment in multilateral pacts that are treaties--laws regulating not only life on the American continent but throughout the world. Intervention is not a right; it is an international crime.

By virtue of the 1928 Kellogg-Briand Treaty the big powers renounced the use of force as a means to settle conflicts. Based on this pact, the United States, the Soviet Union, the United Kingdom and France took the Nazi war criminals to the scaffold.

The people of the world consecrated their rejection of the use of force in Article 2.3 of the UN Charter; the peoples of America did likewise in Article 20 of the OAS Charter. Additionally, Article 2.4 of the UN Charter and Article 18 of the OAS Charter consecrate the respect for the sovereign decisions of each state in matters which, as stipulated by international law, are of their sole domestic purview. These are norms that perfect the principle of nonintervention in the legal sense.

Panama experienced moments of patriotic indignation following the introduction of the so-called DeConcini reservation. Via diplomatic channels the national government firmly expressed its rejection of that amendment as something harmful not only to U.S. relations with Panama but its relations with the entire continent. President Carter and the Senate leaders quickly understood this. The Senate then pointed out that a major tenet of U.S. policy is its adherence to the principle of nonintervention. And this adherence also pertains to the neutrality treaty which is of an indefinite duration. It is necessary to stress that the Senate's definition of U.S. policy in this reservation covers both treaties, which are mentioned specifically in the reservation, so that there would not be the slightest doubt that the DeConcini amendment added to the neutrality treaty would not continue in force. [Es necesario remarcar que la expresion de politica que hace el Senado en esta reserva incluye a ambos tratados, los cuales se mencionan especificamente en esta reserva, para que no haya la menor sospecha de que la enmienda DeConcini anadida al tratado de neutralidad sigue viva] What continues in force are the legal commitments of the United States to the UN and OAS charters that forbid intervention.

And further, as the instruments drawn up by one or more parties regarding a treaty (Article 31 of the Vienna convention on treaty laws) are very important for the interpretation of treaties in international law, it is deemed pertinent to transcribe the letter that President Carter sent General Torrijos on 18 April:

"General Omar Torrijos Herrera, chief of government of Panama.

"Dear General Torrijos:

"A few moments ago the U.S. Senate granted its consent to the second of the Panama Canal treaties that you and I signed in Washington in September of last year.

"The ratification of the new treaties opens a new era in U.S. relations not only with Panama but with all the nations of the hemisphere. Working jointly our two nations can set an example and encourage others in the Americas and elsewhere to work toward just and constructive international cooperation in the pursuit of common goals.

"Precisely because these treaties are so important to our two countries, their negotiation has been drawn out and difficult. The debate in our Senate has been the longest ever in the history of the United States over a treaty and as you know the debate has been vigorous. The treaties have brought to the fore in our nation difficult and emotional subjects removed from the canal and our treaties with Panama, just as in your country patriots of good will have had clearly divergent viewpoints as occurs when one wants to make just transactions to reach common goals of greater importance.

"The patience and patriotism of the people of Panama during this lengthy process has been impressive and has earned the respect of the world. In recent months there have been moments when the outcome was uncertain and there were doubts as to whether the two treaties should be ratified. On our part, these doubts have been set aside.

"With its actions today the Senate has reaffirmed what was important in the treaties from the beginning: that the United States, while safeguarding its interest in a secure, open and accessible canal, does not intend to interfere in the domestic affairs of Panama, its government, its policies or its cultural integrity, nor in any way undermine its sovereignty or its political independence.

"These are the principles that we have always cherished as a nation. We have lived up to them in our relations with other American republics since President Roosevelt proclaimed his adherence to the principle of nonintervention in 1933. Those principles are consecrated as international rights in the UN and OAS charters. Therefore, it is appropriate that those principles, particularly the principle that no nation has the right to interfere in the domestic affairs of another, should be incorporated into the treaties and its related documents, including the Senate resolutions. When we meet to exchange the ratification documents we will be able to reiterate that this principle of nonintervention is clearly accepted by our two countries.

"Respect for the sovereignty and dignity of Panama and the United States must be the basis on which the establish the cooperation and mutual respect that will be decisive for the new kind of relationship that we are about to begin. I want to congratulate and thank you, General Torrijos, for the great courage and leadership you gave the people of Panama while our countries were negotiating this new relationship.

"I look toward the future with great hope and confidence. And, on the personal level, I hope and wish to visit Panama to reaffirm our personal friendship and this new relationship between our two countries.

"Sincerely, Jimmy Carter"

In this letter, President Carter reaffirmed the U.S. commitment to refrain from intervention in Panama's internal affairs.

2. Notwithstanding any other provisions of this treaty, no funds may be drawn from the U.S. Treasury for payments under Article XIII, Paragraph 4, without statutory authorization.

Panama's right to receive the sums stipulated in Article XIII, Paragraph 4, is very clear Now, if in order to meet its contractual obligations the United States must follow a domestic legislative procedure, Panama has no objection. What is important is for the United States to meet its obligations in Panama's favor. The domestic mechanism provided for in U.S. legislation is of no concern to Panama.

3. Any accumulated unpaid balance under Paragraph 4 C. of Article XIII at the termination of the treaty shall be payable only to the extent of any operating surplus in the last year of the treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the treaty any such unpaid balance which shall have accrued before such date.

This is a reservation which contains a correct interpretation of the treaty. Panama has always understood, and so explained to the citizenry at the time, that the budget containing revenues from and expenditures for the operation of the canal would be so drafted as to make the canal commission capable of paying to Panama the sum stipulated in Article XIII, Paragraph 4 C. If for unforeseen reasons this sum were not paid in a certain year, Panama understands that the United States will make an effort to cover that sum in subsequent budgets. Paragraph 4 C. is not symbolic or worthless. The two countries, in good faith, must give it practical content.

For this reason, Panama does not foresee the accumulation of unpaid balances in the year 2000. However, if they did exist, the United States would not be obligated to make such payment to Panama. In summary, there is a clear understanding between the U.S. Senate and the Republic of Panama in this area.

4. Exchange of the instruments of ratification shall not be effective earlier than March 31, 1979, and the treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.

Article II provides that the canal treaty "...shall enter into force...6 calendar months from the date of the exchange of the instruments of ratification." In view of the abovementioned reservation, the fact that the instruments are exchanged will not make the treaties effective within 6 months as was previously agreed. The significant ceremony in which the chiefs of government of Panama and the United States will exchange the instruments of ratification of the Torrijos-Carter treaties will soon take place in Panama. However, the exchange will not be effective until 31 March. The Senate made this decision in order to provide enough time for the legislation to be enacted in the United States for the implementation of the treaties. However, the postponement of the date in which the treaties go into effect--nothwithstanding the exchange of the instruments of ratification--is not a change, because in international law there is no obligation to proceed to the exchange of the instruments of ratification of the treaties even if the treaties have been ratified. This is a political decision that is properly made by the body which manages foreign relations. In the specific case of the Torrijos-Carter treaties, the governments of Panama and the United States have the power to choose whatever date they consider most convenient for the exchange of ratification instruments. Panama understands that the deadline for the treaties' entry into force is 1 October 1979; however, it may take place before that date if the U.S. Congress completes, before that date [as published] the legislation to implement the treaties.

5. The instruments of ratification to be exchanged by the United States and the Republic of Panama shall each include provisions whereby each party agrees to waive its rights and release the other party from its obligations under Paragraph 2 of Article XII.

Article XII of the Panama Canal treaty refers to the possibility of building a sea-level canal in Panama or adding a third set of locks to the present canal. There is no question that the subject of a sea-level canal was not introduced into the negotiation at Panama's initiative. This subject was given great importance during the stage of the negotiation which led to the draft treaties of 1967. In the negotiations that began in 1971, the subject remained latent for several years and then it suddenly regained prominence in July 1977. The United States made proposals which Panama vigorously rejected. The United States wanted an option in perpetuity to build a sea-level canal in Panama. This was the main issue discussed at the meeting in Bogata of the presidents of Colombia, Venezuela, Costa Rica and Mexico, the prime minister of Jamaica and the chief of government of Panama. It was there that a formula, basically the one established in Paragraphs 1 and 2 of Article XII, was developed.

According to Paragraph 1 of Article XII, for the duration of the treaty, Panama and the United States "...commit themselves to study jointly the feasibility..." of a sea-level canal in Panama. If after this study the two parties agree that this canal is necessary, they may negotiate the terms of a new treaty for its construction. Therefore, there is no obligation here restricting Panama or placing an obligation on its territory.

Paragraph 2 A. of Article XII represents a great concession made by Panama to the United States. Panama pledged not to build a canal or to permit a canal to be built in Panama for the duration of the treaty, that is until the year 2000, without the consent of the United States. Here there is a clear obligation on the territory of Panama which limits Panama's freedom of action for 22 years.

Paragraph 2 B. of Article XII places a limitation on the United States in its negotiating capacity. According to this article, the United States cannot negotiate for 22 years with third countries of America on the construction of a canal outside Panama, unless Panama frees it from that limitation.

Paragraphs A. and B. referred to the establishemtn of a legal equilibrium in the counter-claims [contraprestaciones] of the parties. But in the material aspect, it is obvious that Paragraph 2 is balanced against Panama because it is known that the most adequate routes for building a sea-level canal are in Panama. The disproportion of the distance in the routes of Nicaragua, Costa Rica, and Colombia compared to Panama is immense. And it is not only the problem of construction costs but also the length of the routes which delays the transit of ships, which practically excludes the possibility of building a new canal outside Panama. The Senate considered that it was too much for a nation as small as Panama to have a veto over its negotiating capacity. It attributed more value to this than to the concession which Panama accepted in Bogota for the sake of reaching an agreement [transaccion].

Now Panama can, if it so desires and finds adequate financing, build a new canal whenever it deems it appropriate without having to consult the United States. At the same time, the United States is free to negotiate with third countries without Panama's veto.

The formula contained in the reservation, previously agreed upon with Panama, does not alter the treaty. What the two parties will do is that, upon exchanging the ratification instruments, each will waive its right and release one another. The treaty is not modified. If there is a waiving and mutual release of the reciprocal duties and rights agreed to in Paragraph 2, it is because this clause remained unchanged. But the presidents of the two countries will expressly waive the right given their countries by the treaty and will release each other from their obligations regarding the sea-level canal.

By order of Article 277 of the constitution, General Torrijos has the power to direct Panama's foreign relations. In the exercise of this power, he will waive any right which does not have practical significance and will accept the U.S. waiver which is of practical significance to Panama. Now we will have the free disposition of the territory which God placed in the hands of Panamanians and which for well-known historical reasons has been in foreign hands. The monopoly of routes granted to the United States is eliminated forever. An appropriate formula was found so as to avoid commitments with the United States regarding the sea-level canal in Panama.

6. After the date of entry into force of the treaty, the Panama Canal Commission shall, unless otherwise provided by legislation enacted by Congress, be obligated to reimburse the Treasury of the United States of America as nearly as possible for the interest cost of the funds or other assets directly invested in the commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the government and not reimbursed before the date of entry into force of the treaty. Such reimbursement of such interest costs shall be made at a rate determined by the secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings.

For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase "net direct investment" has under Section 62 of Title 2 of the Canal Zone Code.

This is a duty which the Senate has assigned to the Panama Canal Commission. It is part of the right which Panama gave the United States by virtue of Article III. The responsibility for the operation of the canal rests with the United States. Its rights and duties are exercised and fulfilled through the aforementioned commission.

Aside from the fact that it is evident that the United States has been amortized bountifully, the knowledge of its revenue-raising capacity to cover the Panama Canal costs according to studies by experts contracted especially by U.S. authorities demonstrates that the policy on revenue and expenditures for the canal's operations can be established in such a manner that will satisfy the provisions of this reservation and the income which Panama hopes to receive according to Article XIII, Paragraph 4 B. and C., without significantly affecting the volume of traffic. Therefore, this reservation does not alter what was agreed upon. To the extent that the United States does not violate the principle of honoring the treaties in good faith, Panama cannot present claims to the United States.

The most significant point in Article XIII is that the canal will revert to Panama on 31 December 1999, free of debts. This remains unchanged and it is this great achievement which fills the hearts of all Panamanians with joy.

B. Understandings:

1. Nothing in Paragraphs 3, 4 and 5 of Article IV may be construed to limit either the provisions of Paragraph 1 of Article IV providing that each party shall act, in accordance with its constitutional processes, to meet any threat to the security of the Panama Canal, or the provisions of Paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the canal for the duration of this treaty.

Here the Senate expresses an understanding that can meet no opposition in Panama. Paragraph 1 of Article IV was explained to Panamanian citizens just as it was outlined by the Senate. Paragraph 2 of Article IV grants to the United States "...primary responsibility to protect and defend the canal." However, it is evident that, since the canal is on Panamanian soil, we Panamanians have the greatest interest in defending it. For that reason, the wisest course is for there to be close cooperation between the armed forces of the two countries for the protection of a canal that is of interest to them and to the world.

It is also obvious that the armed forces of the two countries must act in conformity with their respective constitutional processes. In Panama only the assembly of representatives can "declare war and authorize the executive to negotiate for peace." (Article 141, Paragraph 2 of the constitution) In the United States war and peace also depend on the popular will as represented by Congress. Each country has constitutional rules which the armed forces should always respect.

2. Before the first date of the 3-year period beginning on the date of entry into force of this treaty and before each 3-year period following thereafter, the two parties shall agree upon the specific levels and quality of services, as are referred to in Article III, Paragraph 5 of the treaty, to be provided during the following 3-year period and, except for the first 3-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are assential to the effective functioning of such canal operating areas and such housing areas referred to in Article III, Paragraph 5 of the treaty. If payments made under Article III, Paragraph 5 of the treaty for the preceding 3-year period, including the initial 3-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following 3 years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both parties, or any costs of services disputed by the two parties pursuant to the reexamination of such costs provided for in this understanding.

When the sum that the United States should pay to Panama for police services, fire protection, street maintenance, public lighting, street cleaning, traffic control and garbage collection was set at $10 million, it was believed that this sum represented the real expenses that would be incurred by Panama in providing those services to the areas agreed upon without additional costs to the treasury of Panama, since said services to be assumed by Panama would have originated solely from the existence of the canal and therefore should be considered a canal operating cost. It was not an arbitrary figure, but one duly substantiated by the Panamanian negotiating mission to the U.S. negotiators. It was not a subterfuge to obtain a donation from the United States, but rather an act of justice because of the real expenses which Panama would incur upon reassuming jurisdiction over its territory called the Canal Zone. For this reason, the following adjustment clause was included in Article III:

It is agreed that every 3 years from the date that this treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

The understanding proposed by the Senate is acceptable. The mechanism of adjustment was established so that Panama will always receive what it spends in providing those services.

3. Nothing in Subparagraph 4 C. of Article XIII shall be construed to limit the authority of the United States of America through the United States Government agency called the Panama Canal Commission to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation and maintenance of the Panama Canal. In addition, toll rates established pursuant to Paragraph 2 D. of Article III need not be set at levels designed to produce revenues to cover the payments to Panama described in Subparagraph 4 C. of Article XIII.

This understanding is consistent with the treaty. During the debate which preceded the plebiscite, it was clearly explained that the United States would control the administration of the canal for 22 years by reason of its majority position on the Canal Commission. Article III, Paragraph 2 D. gives the United States the power to "establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment." The two parties agreed, in Article III, Paragraph 1 A. of the neutrality treaty that the tolls would be "...just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the canal."

When the text of Article XIII, Paragraph 4 B. and C. was agreed to, it was evident from a study of the canal operations that the canal produces approximately $18 million annually which comprise the canal's operating revenues [costo de operacion]. The negotiators' understanding was that this figure would serve as a base to cover the payment to Panama of the $10 million guaranteed in Article XIII, Paragraph 4 B. and the additional $10 million agreed to in Article XIII, Paragraph 4 B. and C. these payments being considered as part of the canal's operating revenues. For this reason we are in agreement that the obligations derived from Article XIII, Paragraph 4 B. and C. in favor of Panama can be covered without raising tolls and for this reason we agree with the Senate that it is not imperative to raise tolls to cover these obligations to Panama. By virtue of the principle of good faith which prevails in the observance of the treaties, Panama expects the United States to accommodate its policy on expenditures so that this article can be the means by which Panama receives a fairer retribution for its contribution to the canal work. To the extent that the Panamanian people are satisfied with the canal administration due to the products they derive from it, they will continue protecting their canal. But if a stingy spirit prevails, aggravating the injustice suffered by Panama since 1903, then a circle of friendship will not have been built around the canal but rather one of hatred, with possible grave consequences if a crisis occurs which the national government would be the first to deplore.

4. Any agreement concluded pursuant to Article IX, Paragraph 11, with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both parties.

It is evident that the treatment contemplated in Article IX, Paragraph 11, with respect to the exchange of prisoners will have to be adjusted to the constitutional processes of each country so that it may be effective. There can be no opposition to this understanding.

5. Nothing in the treaty, the annex or agreed minutes relating to the treaty, or in any other agreement relating to the treaty obligates the United States to provide any economic assistance, military aid assistance, security supporting assistance, foreign military sales credits or international military education and training to the Republic of Panama.

This is the correct interpretation. Panama has always understood that there is no provision in the Panama Canal treaty that obliges the United States to provide Panama with economic assistance or to give it donations.

It is impossible to conceive of obligatory assistance. Solidarity cannot be imposed by decree or by treaties.

6. The President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this treaty in the instrument of ratification exchanged with the government of the Republic of Panama.

This is a Senate understanding addressed to the President of the United States. Panama, according to the statements expressed in this document, has accepted the amendments, reservations and understandings which the Senate of the United States attached to the Torrijos-Carter treaties.

Foreign Ministry Conclusions

The previous exposition permits the Foreign Ministry to declare that the Torrijos-Carter treaties with the Senate resolutions:

1. Do not offend the nation's dignity.

The unquestionable fact that the United States must leave the Isthmus of Panama at the latest by 31 December 1999 completes our process of independence and places in our hands the exclusive control of the canal for use as an effective lever for our economic and social development. Also, all prospects of an alleged and obsolete "right" of intervention have been dispelled since the Senate of the United States has reaffirmed in the Church amendment the contents of the Torrijos-Carter declaration, that is, that any action taken by the United States in connection with the Panama Canal"...shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity."

Nothing can reaffirm our national dignity more than the knowledge that there will be an end to the military occupation of the fatherland almost 100 years after the establishment of the republic.

2. The objectives of the treaty have not been distorted or changed.

The fundamental objective of the liberating negotiations was to agree in the treaty to a clear and categorical program for our liberation. For this reason it was a fundamental objective to agree to a definite date or deadline for the new treaty. What has been the ideal of all Panamanians was realized in Article II, Paragraph 2, of the canal treaty:

"2. This treaty will expire at noon, Panama time, on 31 December 1999."

Greater conciseness and precision cannot be conceived.

Nothing has occurred after the plebiscite which weakens or alters this clause.

Another fundamental objective of the treaty was to obtain the reversion of the canal to Panama free of debts. This was agreed to in Article XIII, Paragraph 1, of the Panama Canal treaty which says:

"Upon termination of this treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two parties may otherwise agree."

What was stated here and which our people understood certainly as a great achievement in the path of our liberation has not been distorted or diminished.

Other fundamental achievements of the negotiations are the abrogation of the 1903 treaty and its amendments (Article I) and the resumption by Panama of its exclusive jurisdiction throughout all national territory (Article XI). The amendments contained in the Senate resolutions have not tarnished these definitive achievements of our people.

3. Nothing will prevent Panama from effective exercise of its sovereignty throughout all its territory.

The position of the U.S. Government during the Senate debates was that the United States has no sovereignty in the Canal Zone. CARTER has spoken firmly in defense of Panama's traditional thesis. This position has cleared this legal problem in the minds of the American people. In keeping with this position, Article XI establishes that Panama will resume total jurisdiction in the Canal Zone when the treaty enters into force. U.S. jurisdictional rights, the only thing it possessed in Panama, will end on that date. The Senate debate and the firm position of the Senate majority have reaffirmed Panamanian sovereignty, which will be exercised effectively by Panama when the treaty goes into effect, because this treaty eliminates the so-called Canal Zone government. The anachronism of two governments in a single territory, as was stressed with patriotic zeal by President Demetrio Basilio Lakas in a meeting with President Nixon in 1971, has been brought to an end.

4. Great national objectives have been achieved.

By virtue of the generational alpinism spoken of very properly so by the chief of government, all generations of isthmians have contributed their ideas, efforts and sacrifices. Each Panamanian has been a volunteer soldier in the common task of liberation. Beginning with the note by Jose Domingo de Obaldia and Eusebio A. Morales in 1904, which best expresses our legal arguments, up to the tragic event of the January martyrs--22 Panamanian heroes offered their lives and gave an everlasting cry of Panama's wish to be sovereign and free--it can be said that Panama has sought to:

A. Abrogate the 1903 treaty;

B. Recover the patrimony constituted by Panama's geographic position and its isthmian configuration to exploit the most important natural resource given to it by God, that is, to exploit to its maximum transit operations of the canal, the railroad and ports under its exclusive control and administration;

C. Reincorporate the Canal Zone into the rest of the fatherland's territory;

D. End the U.S. civilian and military presence;

E. Place the canal under a system which will guarantee the transit of ships of all flags on equal conditions and isolate the canal from any public controversy; and

F. Train qualified personnel in technical matters to assume responsibility for the canal's administration to the fullest extent possible.

The Foreign Ministry can state with satisfaction that the fundamental objectives which were imbedded in the national soul have basically been achieved. Unfortunately, all of these objectives will not be achieved immediately. It involves a liberation program that will be completed in 22 years, because the treaty is the product of negotiations in which reciprocal concessions were made. All Panamanians would like this term to be shorter, but we were able to achieve only that which is established in the treaties, despite the titanic and persistent efforts of our negotiator.

As always, Bolivar's ideals are timely here: "Let us seek a medium between those extremes which could lead us to the same obstacles, to unhappiness, to dishonor. I dare to give the results of my thoughts about the future fate of America: not the best fate, but the most feasible."

Simon Bolivar, Reply from a South American to a Gentleman of This Island, Henry Cullen.

The achievements obtained in the negotiations are conquests which belong to the Panamanian people. They cannot be destroyed or renounced but can be taken to their ultimate culmination by future generations. Let us strengthen these conquests, the most feasible now and, when better circumstances for struggle exist, we will again undertake the task to improve the terms of the relationship. Let us think always of generational alpinism, of the contribution of each generation to the nation, to its progress and sustained growth. The forebears have bequeathed us a fatherland. Let us work for it each day.

The national government has reached the conclusion that the treaties unquestionably achieve, within a reasonable period of time, the fundamental objectives of the Panamanian nation. Because of this, the national government will consent to the exchange of the instruments of ratification of the Torrijos-Carter treaties. With the entry into force of the treaties, better instruments of struggle will be placed in the hands of the republic. With them, Panama will continue its efforts so that the national objectives will be realized in a shorter period of time by virtue of opportune and patriotic negotiations that the governments of the future will undertake.

The Foreign Ministry has faith in the capacity for struggle of the Panamanians. It also has faith that with time the U.S. public will better understand Panama's reasons for insisting on an improvement in the terms of its contractual relationship with the United States. This will facilitate the future decisions of the U.S. Government in its relations with Panama. The North American people are a just people. Some of their leaders have shown courage, patriotism and a clear sense of history. The Torrijos-Carter treaties are evident achievements in our liberation struggle, but they are not the final phase.

Upon agreeing to the terms of the protocol of the instruments of ratification of each treaty, Panama will reaffirm its right to self-determination, respect for its territorial integrity and political independence and its rejection of all forms of intervention in its internal affairs and will ask the United States to reaffirm its commitments in accordance with the UN and OAS charters.

Let us view the future with optimism because each Panamanian is struggling to hasten the liberation process. The rulers and those who are ruled should utilize to the maximum the favorable opportunities which present themselves to promote the common good. Panama opportunely utilized the process of decolonization and made itself part of it with reciprocal solidarity. We went to the Third World and the nonalined countries and we obtained the necessary support so that the whole world could understand Panama's liberation cause. Thanks to the persistent work of the Foreign Ministry, we concluded the negotiation with the treaties. No one can deny that the Torrijos-Carter treaties contain great and positive advances for Panama in the political and economic spheres. We have reached levels in our liberation process that place us very near the summit.

We are sure that we will climb the summit of perfecting our independence on 31 December 1999 without bringing anguish or mourning to the hearts of Panamanian mothers.

We Panamanians have followed with great interest the debates in the U.S. Senate. The Spanish version of the debates reached our homes by radio. All of us were able to perceive the intense opposition against the treaties in the Senate. At no time was it certain that the treaties would be approved with or without amendments. It is evident that no one in Panama or the United States can predict that the next Senate will be better than the current one. The Panamanian citizenry ratified the treaties on 23 October 1977 and it will again ratify them with the national jubilation that will reign when President Carter and General Torrijos sign in Panama the protocols of exchange of the ratification instruments.

We assume full responsibility for the acceptance of the treaties with the conviction, firmness and encouragement that patriotism and the dedication to the cause of Panama's liberation give us.

Panama and the United States have wanted and sought a friendly and peaceful solution. This was achieved after 14 years of intense negotiations in which Panamanian nationalism saw the flowering of its best ideas. It is now up to all Panamanians, architects and beneficiaries of the treaties, to enjoy these benefits in a climate of peace and national unity.

Panama, 25 April 1978, Foreign Ministry

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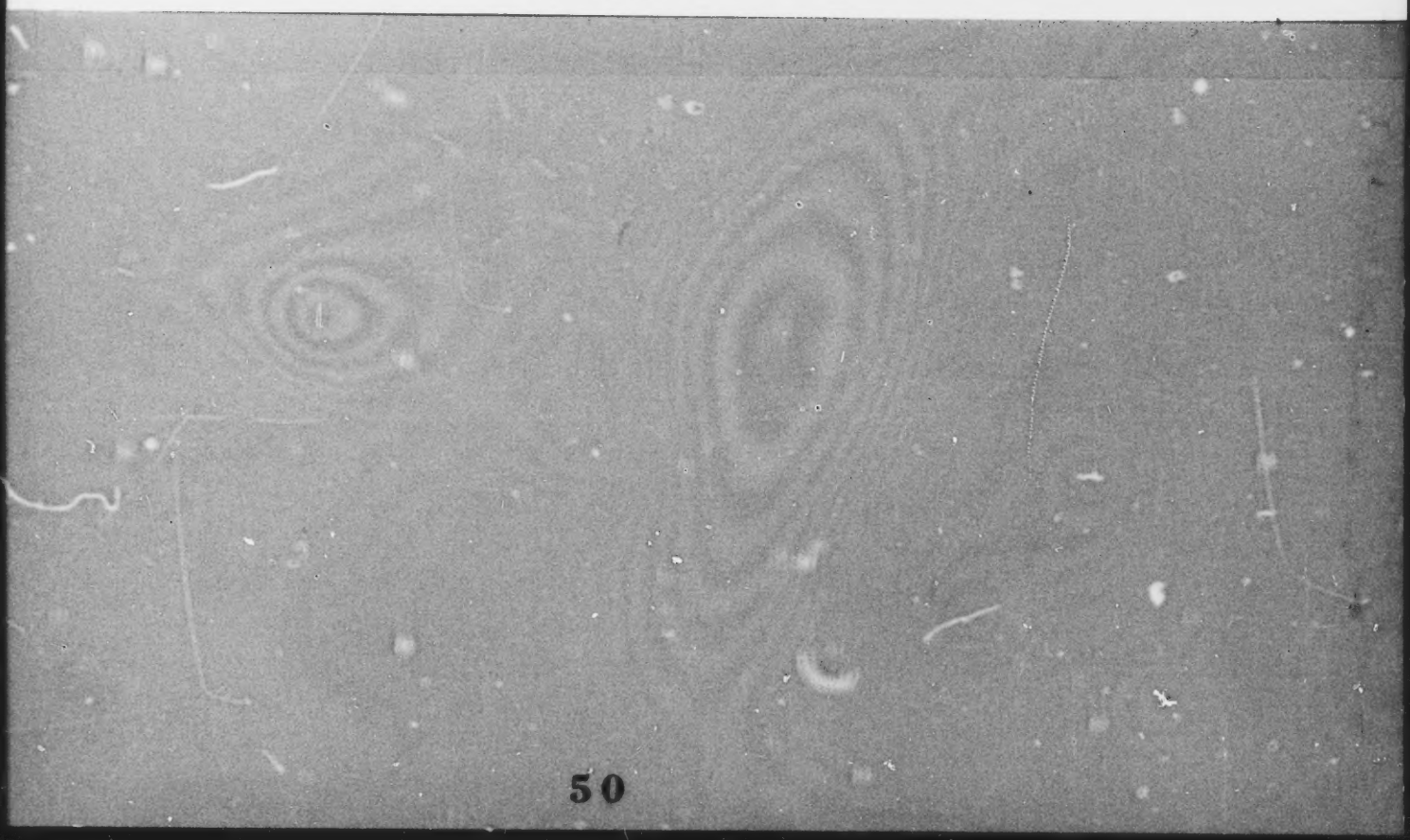
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